

1     **AMENDMENT NO. 1 TO THE INTERLOCAL AGREEMENT**  
2     **FOR THE SMITH ISLAND RESTORATION PROJECT BY**  
3     **AND BETWEEN SNOHOMISH COUNTY AND THE CITY OF**  
4     **EVERETT**

5     This Amendment No. 1 To The Interlocal Agreement For The Smith Island Restoration  
6     Project By And Between Snohomish County And The City Of Everett is made and entered  
7     into by and between Snohomish County (hereinafter the "County") and the City of Everett  
8     (hereinafter the "City"), collectively the "Parties".

9     WHEREAS, the County and the City previously entered into that "Interlocal Agreement  
10    For The Smith Island Restoration Project By And Between Snohomish County And The City  
11    Of Everett" dated September 2, 2016 (hereinafter "Agreement"), which Agreement coordinates  
12    improvements for the Smith Island Restoration Project as between the County and the City as  
13    more fully set forth therein; and

14    WHEREAS, the Agreement provides for the County to perform certain work within  
15    the Smith Island-City area referred to as "Breach and Related Work" as more fully set forth in  
16    Section 1.2 of the Agreement for which the City is responsible for funding as provided in  
17    Section 3.1.3 of the Agreement in accordance with the terms set forth in Exhibit C to the  
18    Agreement titled "Breach and Related Work Bidding and Reimbursement"; and

19    WHEREAS, Sections 1.2 and 2.10.2 of the Agreement provide that the Parties shall  
20    execute an amendment to the Agreement setting forth such additional administrative terms  
21    and conditions governing the construction work to be performed by the County within the  
22    Smith-Island City area pertaining to Breach and Related Work not otherwise addressed in the  
23    Agreement, and the Parties now wish to memorialize such amendment in accordance with  
24    Section 2.10.2 of the Agreement to clarify the terms of each party's responsibilities  
25    concerning construction of the Breach and Related Work and the City reimbursing the County  
26    in full for such work;

27    NOW, THEREFORE, in consideration of the mutual promises and covenants contained  
28    herein, it is agreed that the Agreement shall be amended as follows:

29    **GENERAL TERMS AND CONDITIONS**

30    Section 1: Delete Section 2.8.3 - Section 2.8.3 of the Agreement is hereby deleted in its entirety.

31    Section 2: Replace Exhibit C - In accordance with Sections 1.2 and 2.10.2 of the Agreement,  
32    the Parties hereby replace and supersede Exhibit C to the Agreement with Exhibit C (Revised)  
33    attached hereto. The purpose and intent of Exhibit C (Revised) is to clarify and otherwise set  
34    forth those additional administrative terms and conditions upon which the County shall perform

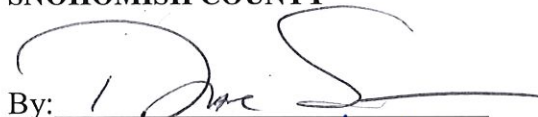
1 the Breach and Related Work set forth in Section 1.2 of the Agreement within the Smith Island-  
2 City area including the City's estimated cost for construction of the Breach and Related Work  
3 within the Smith Island-City Area. In accordance with Section 2.10.2 of the Agreement, nothing  
4 contained in Exhibit C (Revised) shall be construed to amend or supersede an express provision  
5 contained within the Agreement itself save and except for replacing and superseding Exhibit C  
6 attached thereto. In furtherance thereof, all reference to Exhibit C contained within the  
7 Agreement shall be deemed amended to hereinafter reference Exhibit C (Revised).

8 Section 3: Savings Clause – To the extent not otherwise amended as set forth above, all other  
9 terms and conditions of that “Interlocal Agreement For The Smith Island Restoration Project  
10 By And Between Snohomish County And The City Of Everett” dated September 2, 2016, shall  
11 hereby remain in full force and effect.

12 Section 4: Effective Date. This Amendment No. 1 shall become effective following the  
13 approval of the Amendment by the official action of the governing bodies of each of the Parties  
14 hereto and the signing of the Amendment by the duly authorized representative of each of the  
15 Parties hereto.  
16

17 IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. One,  
18 effective on the latest date shown below. The signatories below represent and warrant that they  
19 possess the authority to execute this Amendment No. 1 and bind their respective entities.  
20

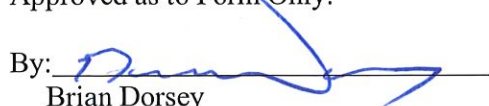
21  
22 **SNOHOMISH COUNTY**

23  
24  
25 By:   
26 Dave Somers 3/24/17  
27 Snohomish County Executive  
28


29 ATTEST:

30  
31 By:   
32  
33

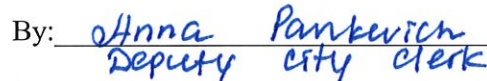
34 Approved as to Form Only:

35  
36 By:   
37 Brian Dorsey  
38 Deputy Prosecuting Attorney  
39  
40  
41

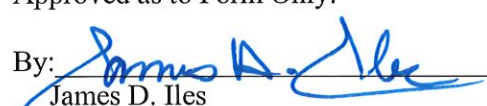
22 **CITY OF EVERETT**

23  
24  
25 By:   
26 Ray Stephanson  
27 City of Everett Mayor  
28

29 ATTEST:

30  
31 By:   
32 Deputy city clerk  
33

34 Approved as to Form Only:

35  
36 By:   
37 James D. Iles  
38 City Attorney  
39  
40  
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1 **EXHIBIT C (Revised)**

2 **Smith Island-City Area Breach and Related Work**

3 **Parties' Responsibilities, Bidding and Reimbursement**

4 The purpose of this Exhibit is to set forth the additional terms and conditions  
5 governing that construction work to be performed by the County within the Smith Island-  
6 City area consisting of "Breach and Related Work" as more fully set forth in Sections 1.2  
7 and 2.10.2 of that "Interlocal Agreement For The Smith Island Restoration Project By  
8 And Between Snohomish County And The City Of Everett" dated September 2, 2016  
9 ("Agreement"). All reference in this Exhibit to "Breach and Related Work" to be  
10 performed by the County contained herein shall be in reference to that work performed by  
11 the County within the Smith Island City-area and shall not be construed as referencing or  
12 including any Breach or Related Work performed by the County within the Smith Island-  
13 County area unless otherwise specifically identified as such.

14 **A. City Responsibilities**

15 1. Plans, Specifications and Permits. No later than first quarter of 2017  
16 the City shall provide the County 100% plans and all necessary City permits for the Breach  
17 and Related Work to be performed by the County within the Smith Island-City area

18 2. Cooperation with the County's Contractor(s). The City shall make all  
19 reasonable efforts to cooperate with the County's Contractor(s) in facilitating the Breach and  
20 Related Work and make necessary personnel available so as to not delay the Contractor(s)'s  
21 construction schedule. The City shall be responsible for any costs to the County for delays to  
22 the Breach and Related Work to the extent delays are caused by the City.

23 3. Acceptance of Breach and Related Work. The City, within thirty (30)  
24 working days after notification by the County of the completion of the Breach and Related  
25 Work and receipt of the as-built plans, shall issue written notification to the County of any  
26 deficiencies or of acceptance of the work. If notification has not been received by the County  
27 within the thirty (30) day period, the Breach and Related Work shall be considered complete  
28 and accepted by the City as of the close of business on day thirty (30). Upon acceptance, the  
29 Breach and Related Work becomes City property and the City assumes all responsibility for  
30 its maintenance and operation.

31 4. City Provided Inspector. The City may furnish an inspector for the  
32 Breach and Related Work. All costs for such inspection will be borne solely by the City and  
33 shall be in addition to those estimated costs. All contact between said inspector and the  
34 County's Contractor(s) shall be through the County's on-site representative who shall be  
35 identified at the preconstruction conference.

36 5. Reimbursement of County Costs. The City shall be responsible for  
37 reimbursing the County for all actual costs incurred by the County that are associated with the  
38 Breach and Related Work in the Smith Island-City area subject to the provisions contained  
39 within this Exhibit.

1                   **B. County Responsibilities**

2                   1.     Lead Agency. The County shall serve as the lead agency for all aspects  
3 of project management including, but not limited to, scheduling, bidding, administration, and  
4 construction management for the Breach and Related Work. The County will complete all  
5 Breach and Related Work in accordance with the City's plans, specifications and permits.

6                   2.     Plans, Specifications and Permits. The County shall utilize the City  
7 provided plans, specifications and permits for construction of the Breach and Related Work.

8                   3.     Preconstruction Meeting. After awarding the contract, the County will  
9 arrange a preconstruction conference with the successful contractor(s), the ("Contractor(s)")  
10 and invite the City to attend and participate.

11                  4.     Inspection of Breach and Related Work. The County shall inspect the  
12 construction of the Breach and Related Work based upon the plans, specifications, and  
13 permits approved and provided by the City. The County will retain all inspection reports for  
14 work involving the Breach and Related Work.

15                  5.     Deviation from Breach and Related Work Design. The County shall be  
16 responsible for obtaining City approval for deviations from City approved Breach and Related  
17 Work plans, specifications and permits.

18                  6.     Independent Contractor. The County shall perform all work as an  
19 independent contractor and not as an agent, employee, or servant of the City. The County has  
20 the express and exclusive right to direct and control the activities of County staff, consultants,  
21 sub-consultants, contractors, and sub-contractors in accordance with the specifications set out  
22 in this Amendment No. 1.

23                  7.     Sub-Contracting. The County, in its sole discretion, may hire one or  
24 more consultants, and/or sub-consultants, contractors and/or sub-contractors to perform some  
25 or all of the services necessary for the Breach and Related Work.

26                  8.     Notification of Project Completion. Upon or near completion of the  
27 Breach and Related Work in the Smith Island-City area, the County will deliver to the City an  
28 as-built set of plans of the Breach and Related Work in the Smith Island-City area. After  
29 receiving notice from the City that the Breach and Related Work and the as-built set of plans  
30 is consistent with the approved plans and specifications and permits, the County will accept  
31 the Breach and Related Work from the contractor.

32                  9.     Correction of Deficiencies Identified by City. The County shall be  
33 responsible for correcting any deficiencies in the Breach and Related Work identified by the  
34 City that were the result of the County's contractor not conforming to the City's approved  
35 plans and specifications and permits; Provided, however, nothing contained herein shall be  
36 construed as obligating the County to correct or otherwise be responsible for any deficiency  
37 or defect in the Breach and Related Work to the extent resulting from any error or defect in  
38 the City's approved plans..



1                   10.     Project Records. The County will retain the original polypropylene  
2 plan sheets and all other Breach and Related Work records.

3                   11.     Construction Contract. The County, in accordance with Section C  
4 below, will call for bids and execute a construction contract for Breach and Related Work in  
5 the Smith Island-City area and the Smith Island County area in accordance with the County's  
6 usual procurement processes and the County's standard form construction contracts.

7           C.     **Bidding and Award of Construction Contract for Breach and Related**  
8                   **Work.**

9                   1.     Bid schedules. The Breach and Related Work will be bid in a single  
10 schedule separated into two groups, one for the Smith-Island-City area work and one for the  
11 Smith Island-County area work. The bid package will contain a provision that in substance  
12 states the following:

13                   “Bid items in Group 1 is work on County property and will be paid for from County  
14 funds. Bid items in Group 2 is work on City of Everett property and will be paid for  
15 from City of Everett funds. Accordingly, it is important that your bid be balanced  
16 between the Groups: if a line item on Group 1 is similar to a line item on Group 2,  
17 then your bid prices for those line items on each schedule must be similar. The  
18 purpose of this is to make sure that County funds are not subsidizing City work or vice  
19 versa. The County reserves the right to reject any bid that is not balanced.

20                   The low bidder is the bidder with the lowest total bid, which is the sum of Group 1 and  
21 Group 2.”

22                   2.     Bidding Off-Ramps. Upon opening of the bids for construction of the  
23 Breach and Related Work project, the Parties will meet and confer. The County shall award  
24 to the lowest responsible and responsive bidder, except as follows:

25                   (a)     Over Budget. If the Parties determine that the Breach and  
26 Related Work under the low bid exceeds available funds for the project, the County shall  
27 reject all bids. The parties shall, prior to bidding, discuss the size of available budgets, which  
28 shall at least be equal to the engineer's estimates.

29                   (b)     Unbalanced Bid. If either party determines that low bid  
30 appears unbalanced as described in sub-section C.1 above, then the County shall either reject  
31 the unbalanced bid or reject all bids.

32                   (c)     Re-bid. If all bids are rejected under sub-sections (a) or (b)  
33 above, then the County shall re-bid the Breach and Related Work, unless both City and  
34 County agree that such a rebid would be futile. If on such rebid all bids are again rejected  
35 under sub-sections (a) or (b) above, then either the City or the County may elect, effective on  
36 written notice to other party delivered prior to any third call for Breach and Related Work  
37 bids, to delete Breach and Related Work construction from the Agreement, in which case the  
38 City and County will each independently construct their own Breach and Related Work.

1                   2.     Additional Insured. The construction contract will contain a provision  
2 requiring the City be added as an additional insured on the contractor's required liability  
3 insurance policies.

4                   3.     Assignment of Warranties. The construction contract will contain a  
5 clause that allows the County to assign all contractor's and manufacturer's warranties from  
6 the County to the City.

7                   **D.     Estimate, Segregation, and Payment of Construction Costs**

8                   1.     Estimated Cost of Construction. The estimated cost of construction  
9 associated with the Breach and Related Work within the Smith Island-City Area is as shown  
10 in the attached Schedule of Estimated Project Costs; PROVIDED, the estimated costs will be  
11 adjusted to conform to the successful bidder's proposal. Costs for additional Services to the  
12 extent associated with changes to the Breach and Related Work requested by the City or to the  
13 extent incurred as a result of either deficiencies in the City's plans or unforeseen site  
14 conditions are in addition to those estimated costs as shown in the attached Schedule of  
15 Estimated Project Costs and shall be paid by the City.

16                  2.     Invoicing and Payment. The County shall invoice the City monthly, or  
17 on any other schedule that is mutually convenient and agreed to by the parties. An invoice  
18 will document in reasonable detail the amounts expended by the County related to the Breach  
19 and Related Work in the Smith Island-City area. Invoices shall be based on the County  
20 Contractor(s)'s payments, equipment, materials, and labor expended on the Breach and  
21 Related Work, plus County expenditures in support of the Breach and Related Work. An  
22 invoice will document in reasonable detail the amounts expended by the County related to the  
23 Breach and Related Work in the Smith Island-City area.

24                  3.     Payment of Invoices. Invoices shall be paid by the City within thirty  
25 (30) days of receipt by the City without offset or deduction for any reason. Notice of any  
26 potential dispute regarding such payment request shall be made in writing within the same  
27 time period and delivered by the City to the County. Payment by the City shall not constitute  
28 agreement as to the appropriateness of any item or acceptance of the work so represented. At  
29 the time of final audit, all required adjustments related to any potential dispute for which  
30 notice has been timely given and resolution mutually agreed to by the Parties shall be made  
31 and reflected in a final payment. If the Parties are unable to mutually agree upon resolution of  
32 a potential dispute relating to any invoice submitted by the County to the City as set forth  
33 above prior to completion of the Breach and Related Work, the Parties shall submit the matter  
34 to the dispute resolution process set forth in Section 8 of the Agreement;

35                  4.     City Reimbursement of Costs for Services Performed by County Staff,  
36 Consultants, Sub-Consultants, Contractors, or Sub-Contractors.

37                         (a)     County Staff. The City shall reimburse the County for the costs  
38 of the Services provided by County staff on a time and materials basis plus an administrative  
39 overhead fee pursuant to sub-section (c) below. The County agrees that only those costs  
40 directly attributed to the Breach and Related Work and allowed under accepted accounting

1 procedures will be charged to the City. By way of example, those costs directly attributed  
2 may include, but are not limited to, the following types of cost components:

- 3 i. Salaries, wages, benefits of all County employees engaged  
4 therein;
- 5 ii. Travel expenses, including mileage of County employees;
- 6 iii. Materials, when provided by the County;
- 7 iv. County-owned machinery and equipment, for which the  
8 County equipment rental rate shall be included in computing the cost of the machinery and  
9 equipment;
- 10 v. Other costs and incidental expenses; including depreciation  
11 on County machinery and equipment;
- 12 vi. The full cost to the County of rental machinery and  
13 equipment, together with any operator furnished therewith;
- 14 vii. The cost of equipment, supplies, and related expenses when  
15 purchased by the County; and
- 16 viii. The cost of permits required from other agencies, except the  
17 City.

18 (b) Consultants, Sub-Consultants, Contractors or Sub-  
19 Contractors. The City shall reimburse the County for One hundred percent (100%) of the  
20 final cost of all Services provided by Consultants or Sub-consultants performing work for  
21 and/or in lieu of County staff. The County agrees that only those costs directly attributed to  
22 the Breach and Related Work and allowed under accepted accounting procedures will be  
23 charged to the City.

24 (c) Administrative Costs for Services Performed by County  
25 Staff. For the purpose of fixing the compensation to be paid by the City to the County for the  
26 County performing Breach and Related Work services, it is agreed that there shall be  
27 included in each billing, to cover administrative costs, an amount not to exceed the County  
28 administrative rate. This rate is currently set at 15% of the total labor cost, including benefits,  
29 to the County for only those County employees performing such services for the City under  
30 this Agreement. The administrative rate is not included in charges for materials, equipment,  
31 or payments to contractors or subcontractors. This rate may be reasonably adjusted annually  
32 to reflect changes in actual administrative costs without the need for a formal amendment of  
33 this Agreement.

34 5. Extra Work. There may be unforeseen conditions requiring immediate  
35 resolution during the construction phase of the Breach and Related Work such as construction  
36 disputes and claims, changed conditions and changes in the construction work.  
37 Reimbursement for increased construction engineering and/or construction contract amounts

1 for the Breach and Related Work shall be limited to costs covered by a modification, change  
2 order or extra work order approved as described below in Sections 6 and 7.

3 6. Changes from the Approved Plans. Should it be determined that any  
4 change from the contract plans and specifications for the Breach and Related Work is  
5 required, the County, through the Director of Engineering Services, shall have authority to  
6 make such changes up to the amount of the "Contingency" shown in the attached Schedule of  
7 Estimated City Project Costs for Breach and Related Work Within the Smith Island-City  
8 Area. PROVIDED, that any change in the Breach and Related Work, that would result in an  
9 increased cost to the City in excess of \$15,000 per incident, or that would result in a total of  
10 cumulative incidents that is greater than the "Contingency" amount in the attached Schedule  
11 of Estimated Project Costs, will require a Binding Letter of Agreement, signed by the Parties'  
12 Public Works Directors or their designees, describing the changed scope of work and the  
13 estimated change in the Breach and Related Work cost.

14 7. Contractor Claim. In the event of a claim by the Contractor(s) relating  
15 to Breach and Related Work performed within the Smith Island-City area, the City shall be  
16 responsible for indemnifying, defending and holding harmless the County from and against all  
17 claims, causes of action or damages to the extent arising out of any defect, error or deficiency  
18 in the City's approved plans including, but not limited to, any claims for costs associated with  
19 change orders, delays or additional work to the extent necessitated by any defect, error or  
20 deficiency in the City's approved plans or to the extent resulting from any unforeseen  
21 conditions existing upon the Smith Island-City area.

22 E. **Audit and Final Invoice by County and Review and Acceptance by City of**  
23 **Project Completion**

24 1. Audit and Final Billing. Upon completion and acceptance of the  
25 Breach and Related Work and resolution of contractor claims (if any), the County shall  
26 conduct a final audit in accordance with accepted industry standards. At the time of the final  
27 audit, all adjustments required shall be made and shall be reflected in a final billing to the  
28 City. The County, upon completion of the audit, shall provide the City with a copy of the  
29 audit and a final invoice.

30 2. Review and Acceptance. The City shall have thirty (30) days from  
31 receipt of the audit and final invoice to review and notify the County if it accepts or has  
32 comments on the audit and final invoice.

33 3. Deemed Acceptance. Within thirty (30) days of receipt of the audit and  
34 final invoice, the City shall notify the County in writing of any objections to the audit and/or  
35 final invoice. If no objections are timely delivered, the City shall make final payment to the  
36 County and such final payment shall constitute an acceptance by the City of the County's  
37 costs and accounting. If the City gives timely notice of an objection to the audit and final  
38 invoice, and the parties are unable to mutually agree upon resolution of such objection within  
39 thirty (30) days of the County's receipt of such notice, the Parties agree to submit the matter  
40 to the dispute resolution process set forth in Section 8 of the Agreement.



**Schedule of Estimated City Project Costs for Breach and Related Work Within the  
Smith Island-City Area**

All project costs listed below are estimated and will be adjusted to conform to the successful bidder's proposal and all County expenditures invoiced to the City will be actual expenditures.

| <b>Line #</b> | <b>Description of Bid Item</b>   | <b>Approx. Quantity</b> | <b>Unit</b> | <b>Unit Cost</b> | <b>Total Costs</b>        |
|---------------|--|-------------------------|-------------|------------------|---------------------------|
| 1             | Mobilization*  | 0.26                    | L.S.        | \$266,100        | \$69,186                  |
| 2             | Archaeological and Historical Salvage                                      | 5000                    | EST.        | \$1              | \$5,000                   |
| 3             | Removal Of Structures and Obstructions*                                    | 0.89                    | L.S.        | \$92,000         | \$81,880                  |
| 4             | Clearing and Grubbing-City   | 3.6                     | ACRE        | \$4,000          | \$14,400                  |
| 5             | Removal Of Man-Made Debris   | 10000                   | EST.        | \$1              | \$10,000                  |
| 6             | Removal Of Knotweed  | 263                     | SY          | \$8              | \$2,104                   |
| 7             | Roadway Excavation Incl. Haul-City   | 3625                    | CY          | \$10             | \$36,250                  |
| 8             | Dike Breach and Grading Incl. Haul-City                                    | 2925                    | CY          | \$26             | \$76,050                  |
| 9             | Channel Excavation Incl. Haul-City   | 14650                   | CY          | \$20             | \$293,000                 |
| 10            | Environmental Compliance Lead*   | 0.26                    | LS          | \$27,500         | \$7,150                   |
| 11            | Erosion/Water Pollution Control  | 15000                   | EST.        | \$1              | \$15,000                  |
| 12            | Floating Silt Curtain-City   | 1                       | LS          | \$14,550         | \$14,550                  |
| 13            | Cofferdam-City   | 1                       | LS          | \$6,500          | \$6,500                   |
| 14            | Type B Progress Schedule*  | 0.26                    | L.S.        | \$10,000         | \$2,600                   |
| 15            | SPCC Plan*   | 0.26                    | L.S.        | \$4,000          | \$1,040                   |
| 16            | Contractor Surveying*  | 0.26                    | L.S.        | \$65,000         | \$16,900                  |
| 17            | Health and Safety Plan*  | 0.26                    | L.S.        | \$5,000          | \$1,300                   |
| 18            | Temporary Access and Staging-City  | 1                       | LS          | \$10,000         | \$10,000                  |
| 19            | Six Foot Chain Link Fence With 3-Strand Barbed Wire Top-City               | 1950                    | LF          | \$30             | \$58,500                  |
| 20            | Double 20 Foot Chain Link Gate With 3-Strand Barbed Wire Top-City          | 3                       | EACH        | \$5,000          | \$15,000                  |
| 21            | End, Gate, Corner, and Pull Post for Chain Link Fence-City                 | 12                      | EACH        | \$250            | \$3,000                   |
| 22            | Field Office Building  | 0.26                    | L.S.        | \$8,000          | \$2,080                   |
| A             | <b>Subtotal of Bid Items (Line 1 – Line 24)</b>                            |                         |             |                  | <b>\$741,490</b>          |
| B             | Sales Tax (9.2% of Line A)   |                         |             |                  | \$68,217                  |
| C             | <b>Subtotal of Bid Items and Sales Tax (Line A + Line B)</b>               |                         |             |                  | <b>\$809,707</b>          |
| D             | Contingency (20% of Line C)  |                         |             |                  | \$161,941                 |
| E             | <b>Subtotal of Bid Items, Sales Tax, and Contingency (Line C + Line D)</b> |                         |             |                  | <b>\$971,648</b>          |
| F             | Construction Inspection & Contract Administration (18% of Line E)          |                         |             |                  | \$174,897                 |
| G             | County Staff Administrative Cost Overhead (15% of Line F)                  |                         |             |                  | \$26,235                  |
| H             | <b>Total Estimated Cost Of Breach and Related Work (Lines E – G)</b>       |                         |             |                  | <b><u>\$1,172,780</u></b> |

\* Noted lump sum items with a quantity other than 1.0 represent the agreed split of costs for items shared between the City and County.

